HJ. WAN HABIB SYED MAHMUD *a*

v.

DATUK PATINGGI HJ. ABDUL TAIB MAHMUD & ANOR.

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID ACTING LP
WAN SULEIMAN ACTING CJ (MALAYA) *b*
HASHIM YEOP SANI SCJ
[CIVIL APPEAL NO. 43 OF 1986]
7 APRIL 1986

CIVIL PROCEDURE: *Appeal against an exercise of discretion of the High Court - Refusal by the learned Judge to grant the interlocutory injunction sought by appellant - Whether the learned Judge had erred in law in so declining - Principles governing the exercise of discretion to grant or withhold an interlocutory injunction.* *c*

This was an appeal against an exercise of discretion of the High Court, Kuching. The appellant was a member of the Majlis Kerja Tertinggi ("the Majlis") of Party Pesaka Bumiputera Bersatu, a political party. The learned Judge made the following findings: *d*

(i) that a resolution suspending the appellant was passed in his absence. He was orally informed. A letter followed later;

(ii) that the appellant was not notified of the Majlis' intention to resolve his suspension;

(iii) that the appellant was not given any notice specifically of what he was accused of. It was only the appellant's belief that the Majlis was going to discuss his conduct when he was asked to leave the meeting; and *e*

(iv) that the appellant was not given the opportunity of being heard before the resolution was made to suspend him.

However, the learned Judge declined to grant the interlocutory injunction sought by the appellant on two grounds. The question to be decided on appeal was whether the learned Judge had erred in law in so declining. *f*

Held:

[1] The principles governing the exercise of discretion to grant or withhold an interlocutory injunction are well established. Injunction is pre-eminently a discretionary remedy. The discretion is to be exercised judicially. It is also well established that such an exercise of discretion will not be interfered with by an appellate Court save in exceptional cases such as where the decision of the trial Judge is shown to be based on erroneous assumptions of law or fact or where no reasonable explanation is given for the decision. It is not enough that the appellate Court might have exercised the discretion differently. See *Hadmor Productions Ltd. & Ors. v. Hamilton & Anor.* [1983] 1 AC 191. *g*

[2] In this case it was quite clear from the affidavits that there was a *prima facie* case of natural justice having been denied to the appellant. In other words the claim was not frivolous or vexatious and that there was a serious question to be tried - see *American Cynamid Co. v. Ethicon Ltd.* [1975] 1 All ER 504. It was also clear that in law there is no distinction between expulsion and suspension. But that alone is not sufficient for the appellant to obtain the interlocutory injunction as of right. In this case the trial Judge considered that the balance of convenience did not lie in favour of the appellant. *h* *i*

[3] The learned Judge also held that the suspension was only for six months and when the application was heard before him three months had lapsed. The trial Judge also relied on the long delay of two months before the appellant sought relief and this delay the Judge held to be unreasonable and unexplained by the appellant. Discretionary remedies are exceptional in their nature and shall not be made available to those who sleep on their rights.

[Appeal dismissed with costs,]

Cases referred to:
Hadmor Productions Ltd. v. Hamilton & Anor. [1983] 1 AC 191
American Cynamid Co. v. Ethicon Ltd. [1975] 1 ALL ER 504
John v. Rees [1969] 2 All ER 299
Lawlor v. Union of Post Office etc. [1965] 1 All ER 353
Stevenson v. United Road Transport sUnion [1977] 2 All ER 941
R. V. Senate of University of Aston [1969] 2 All ER 964
Evercrisp Snack Products Sdn. Bhd. v. Sweeties Food Industries Sdn. Bhd. [1980] 2 MLJ 297

Other source referred to:
Equitable Remedies, Spry, 3rd Edn.

For the appellant - Chong Siew Chiang (Richard Wong Ho Long with him); M/s. Siong Advocates
For the 1st respondent - James Putchucheary (Foo Kim Jiong with him); M/s. K.J. Foo & Co.
For the 2nd respondent - J.C. Fong; M/s. Reddi & Co.

JUDGMENT

Abdul Hamid Acting LP:

This is an appeal against an exercise of discretion of the Court below. The facts are not in dispute. Indeed in the grounds of judgment the learned Judge made the following findings:

(1) that a resolution suspending the appellant was passed in his absence. He was orally informed. A letter followed on 26 November 1985;

(2) that the appellant was not notified of Majlis Kerja Tertinggi's intention to resolve his suspension;

(3) that the appellant was not given any notice specifically of what he was accused of. It was only the appellant's belief that Majlis Kerja Tertinggi was going to discuss his conduct when he was asked to leave the meeting; and

(4) that the appellant was not given the opportunity of being heard before the resolution was made to suspend him.

However the learned Judge declined to grant the interlocutory injunction sought by the appellant on two grounds. The question we have to decide on appeal is whether the learned Judge had erred in law in so declining.

The principles governing the exercise of discretion to grant or withhold an interlocutory injunction are well established. Injunction is pre-eminently a discretionary remedy. The discretion is to be exercised judicially. It is also well established that such an exercise of discretion will not be interfered with by an appellant Court save in exceptional cases such as where the decision of the trial Judge is shown to be based on erroneous assumptions of law or fact or where no reasonable explanation is given for the decision. It is not enough that the appellant court might have exercised the discretion differently. See *Equitable Remedies*

by Spry, 3rd Edn. and *Hadmor Productions Ltd. & Ors v. Hamilton & Anor* [1983] 1 AC 191. We might add that a decision will be set aside on appeal if the Court has failed to act in accordance with recognized principles.

In this case it is quite clear from the affidavits that there is a *prima facie* case of natural justice having been denied to the appellant. In other words the claim was not frivolous or vexatious and that there is a serious question to be tried - see *American Cynamid Co. v. Ethicon Ltd.* [1975] 1 All ER 504. It is also clear that in law there is no distinction between expulsion and suspension - see *John v. Rees* [1969] 2 All ER 299, *Lawlor v. Union of Post Office etc.* [1965] 1 All ER 353, and *Stevenson v. United Road Transport Union* [1977] 2 All ER 941. But that alone is not sufficient for the appellant to obtain the interlocutory injunction as of right. In this case the trial Judge considered that the balance of convenience did not lie in favour of the appellant.

He summarised his judgment at p. 20 of the record of appeal in that the suspension was only for six months and when the application was heard before him three months had lapsed. But it will appear that the trial Judge also relied on the long delay of two months before the appellant sought relief and this delay the Judge held to be unreasonable and unexplained by the appellant. Discretionary remedies are exceptional in their nature and shall not be made available to those who sleep on their rights. See *R. v. Senate of University of Aston* [1969] 2 All ER 964 and *Evercrisp Snack Products Sdn. Bhd. v. Sweeties Food Industries Sdn. Bhd.* [1980] 2 MLJ 297.

Thus there therefore are two factors which the learned Judge considered. Firstly, the fact that half of the period of suspension had lapsed. Secondly, he found the delay of two months unreasonable and no explanation given. Relying on the principle which governs the approach to be taken by an appellate court in a matter of this nature, it is our view that the decision should not be interfered with and accordingly the appeal is dismissed with costs.

Also found at [1986] 2 CLJ 115